

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 27 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RANCHODLAL NIVANLAL THROUGH HEIRS AND LEGAL REPRESENTATIVE

Versus

MOHANLAL DALPATRAM

Appearance:

MR MG NAGARKAR Ld. ADVOCATE for Appellants

MR PV NANAVATY Ld. ADVOCATE for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/11/2000

ORAL JUDGEMENT

This appeal is filed by the appellants (Ori. defendants-opponents) challenging the decision rendered by the learned City Civil Judge, Ahmedabad, in Misc. Civil Application No. 611/1976 dated 11.9.1978 determining the mesne profits at Rs. 79/- p.m. from the

date of the suit i.e. 14.2.1966 till the date of the application i.e. 23.12.1976.

According to the respondents-plaintiffs, the property survey no. 64 known as Mohanlal's Chawl is of their ownership. The defendant Ranchhodlal committed illegal trespass over the said property and raised Kacha and pakka constructions and let out those huts and rooms to various persons. They tried to raise good income from such properties. The respondents, therefore, filed a Civil Suit No. 322/1966 for removal of the construction and to handover the possession of the land. The said suit was decreed in favour of the respondents on 22.7.1974. Against the said decision, deceased Ranchhodlal Jivanlal (defendant) filed an appeal being First Appeal No. 401/1975 and present respondents also filed an appeal being First Appeal No. 293/1975 in so far it is rejected the claim of plaintiffs' with regard to street no. 6 and two water stands (Chokadi) shown in the map attached to the plaint and occupied by defendant no. 7 and failed to pass the decree for mesne profits with respect to the defendants no. 13 and 14 from the date of the suit till the possession is handedover to the plaintiffs. Both the appeals were heard together and by a common judgment dated 27.4.1984, this Court (Coram: D.H. Shukla, J.) dismissed both the appeals. The resultant effect of the said judgment is that the respondents were held to be a trespassers and, therefore, they were asked to remove the construction and ordered to handover the possession. During the pendency of the appeals, the respondents have filed an application being Civil Misc. Application No. 611/1976 praying for determination of mesne profits from the date of the suit i.e. 15.2.1966 till the date of the application or till the possession is handedover realised from the kachha or pakka construction, raised on the property being survey no. 64 known as Mohanlal's Chawl. The learned City Civil Judge, Ahmedabad, after appreciating the evidence on record, fixed the mesne profits of the suit property at the rate of Rs. 79/ p.m. As stated above, the said decision is under challenge in the present appeal.

Learned counsel appearing for the parties have fairly stated before me to suggest a reasonable figure of mesne profits instead of entering into the merits of the case and to pass appropriate order. Considering the fact that Hiraben, widow of defendant no. 1- Ranchhodlal, an aged lady collecting a very small amount of rent from the tenants of 13 huts of Mohanlal's Chawl and that she will required to pay mesne profits at the rate of Rs. 79/ p.m. from the date of the suit i.e. 14.2.1966 till the

date, it would be too much for her to pay even the arrears. Considering the above facts, I am of the opinion that the ends of justice shall be met, if the appellants saddled with the liability to pay the mesne profits at the rate of Rs. 40/ p.m. from 14.2.1966 till the date and at the rate of Rs. 80/ p. m. from 1.12.2000 till the possession of the suit land is handedover to the opponents.

In the result, this appeal is partly allowed to the aforesaid extent only. There shall be no order as to costs considering the facts and circumstances of the case.

(K. R. VYAS, J.)
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